

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #: 110910  
DATE FILED: 11/09/01

-against-

98 Cr. 1316

DAVID CARABALLO,

MEMORANDUM OPINION  
AND ORDER

Defendant.

-----X  
**Sweet, D.J.**

Defendant David Caraballo ("Caraballo" or "Defendant") has petitioned the Court for modification of his outstanding fine imposed during his June 12, 2001 sentencing for violations of 21 U.S.C. § 843(b). Defendant's sentence required the payment of a \$300 special assessment and a fine of \$17,500.00. Caraballo now moves, on the basis of financial hardship, for the Court to set aside the fine or, in the alternative, to reduce the fine.

A petition for remission of a fine may only be brought by the Government. 18 U.S.C. § 3573 ("Upon petition of the Government showing that reasonable efforts

to collect a fine or assessment are not likely to be effective, the court may, in the interest of justice - (1) remit all or part of the unpaid portion of the fine or special assessment, including interest and penalties . . ."); see also United States v. Martinez, 281 Fed. Appx. 39, 41 (2d Cir. 2008) ("[T]he sentencing Court may not modify the terms and conditions of the fine except 'upon petition of the Government showing that reasonable efforts to collect a fine or assessment are not likely to be effective.'" (quoting 18 U.S.C. § 3573)); United States v. Linker, 920 F.2d 1, 2 (7th Cir. 1990) ("The language of [18 U.S.C. § 3573] is plain and unambiguous. By its own terms, it applies strictly to the Government, and not to defendants."); United States v. Heimbach, 808 F. Supp. 413, 416 (E.D. Pa. 1992) (denying defendant's petition for remission because "only the United States government may petition [the] Court to remit a defendant's fine").

Because the petition for remission of Defendant's fine has not been filed or joined by the Government, Caraballo's request is denied.

It is so ordered.

New York, NY  
January 18, 2010

  
\_\_\_\_\_  
ROBERT W. SWEET  
U.S.D.J.